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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MONARCH POINT HOMEOWNERS ASSOCIATION,

Plaintiff and Respondent,

v.

SCOTT ARDITI et al.,

Defendants and Appellants.

G040668

(Super. Ct. No. 30-2008-00102043)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Randell L. Wilkinson, Judge. Affirmed.

Bishton • Gubernick, Norris J. Bishton, Jr., Jeffrey S. Gubernick and Debra Hartman Warfel for Defendants and Appellants.

Hickey & Petchul, David E. Hickey and Christopher J. Bonkowski for Plaintiff and Respondent.

Plaintiff Monarch Point Homeowners Association sued defendants Scott Arditi and his wife, Loren Zidell, for refusing to comply with its declaration of covenants, conditions, and restrictions (CC&R's) prohibiting the renting or leasing of their home "for transient or hotel purposes." The court granted plaintiff's motion for a preliminary injunction. Defendants contend this was error. We disagree and affirm the order.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff manages the residential development where defendants bought a house in 2005. Five months later, defendants began short-term rentals of their house for vacations, parties, and commercial uses, including the filming of movies and commercials.

In February 2007, plaintiff sent defendants a cease and desist letter citing sections 10.1, 10.2, 10.3, and 10.14 of the CC&R's. Section 10.1 allows the property to be used only as a single family residence. Section 10.2 forbids the use of the property for business or commercial purposes while section 10.3 prohibits noxious or offensive activity. Section 10.14 in turn bans "further partition or subdivi[sion] of . . . lot[s] . . . [but not] the right of an [o]wner (1) to rent or lease all or any portion of his [l]ot by means of a written lease or rental agreement subject to the restrictions of this [d]eclaration, so long as the [l]ot is not leased for transient or hotel purposes . . . ."

When defendants continued short-term rentals of their property, plaintiff sent notices of hearing to address the issue. Defendants attended several hearings but the parties were unable to resolve their differences.

In August, plaintiff adopted an addendum to its rules and regulations specifically prohibiting short-term rental of residential properties: "No [o]wner shall rent, lease, or let all or any portion of his or her [l]ot for any period less than thirty (30)

days. No [o]wner may advertise, either in print format or electronic media, including the [I]nternet, an offer to rent, lease, or let all or any portion of his or her [l]ot for transient, hotel or vacation rental purposes for a period of less than thirty (30) days. Any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all the provisions of the Association's governing documents . . . ." Defendants refused to comply with the new rule and were fined.

Plaintiff sued defendants in January 2008, alleging causes of action for nuisance, breach of CC&R's, and declaratory relief, seeking a preliminary and a permanent injunction. Three months later, plaintiff moved for a preliminary injunction, asserting defendants' short-term rental of the property violated section 10.14 of the CC&R's and constituted a nuisance. They submitted the declarations of several of defendants' neighbors attesting to defendants' Internet advertisement of the property for short-term rental and their short-term rental of their property as a weekly vacation or party house, a commercial film set for movies and commercials, including the use of bright flood lights with bounce screens and other equipment, which disrupted the serenity of the neighborhood, and for other commercial gatherings. The declarants described broken glass, trash and liquor bottles strewn on the streets and sidewalks near defendants' property, which they claimed created a nuisance and safety hazard for pedestrian and vehicular traffic. They also attested to the excessive parking of cars and other commercial vehicles on the street when the property was used for commercial purposes.

Defendants filed opposition and objected to the declarations supporting the motion. After a hearing, the court granted the motion without ruling on defendants' objections or setting forth any findings.

DISCUSSION

1. Standard of Review

A party requesting an injunction must show: (1) the likelihood of prevailing on the merits of the dispute; and (2) the harm it will suffer without an injunction outweighs the injury the opposing party will suffer from the injunction. (*14859 Moorpark Homeowners Assn. v. VRT Corp*. (1998) 63 Cal.App.4th 1396, 1402.) We review the issuance of a preliminary injunction for abuse of discretion unless the determination of the likelihood of success rests on a pure issue of law based on unconflicting evidence, in which case our review is de novo. (*Ibid*.) Where the court fails to make express findings, we presume it made necessary findings (*ibid*.) and our "task is simply to ensure the trial court's factual determinations are supported by substantial evidence. [Citations.]" (*Howard S. Wright Construction Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 320). An order granting a preliminary injunction will be reversed only if in ruling on one of the factors, the trial court abused its discretion by exceeding the bounds of reason, i.e., where its decision has no reasonable basis or is contrary to the undisputed evidence. (*14859 Moorpark Homeowners Assn. v. VRT Corp*., *supra*, 63 Cal.App.4th at p. 1402.)

2. Likelihood of Success on the Merits

a. CC&R's

Defendants argue plaintiff had no chance of success on the merits because section 10.14 of the CC&R's does not prohibit short-term rental but rather is a ban on subdividing and should be strictly construed to bar only the renting out of individual rooms. The contention lacks merit.

Unless the interpretation of a written instrument, such as CC&R's, turns on the credibility of extrinsic evidence, it "presents [a] question[] of law, which we review

de novo. [Citations.]" (*Bear Creek Master Assn. v. Edwards* (2005) 130 Cal.App.4th 1470, 1478.) "The same rules that apply to interpretation of contracts apply to the interpretation of CC&R's. '"[W]e must independently interpret the provisions of the document. . . . It is a general rule that restrictive covenants are construed strictly against the person seeking to enforce them, and any doubt will be resolved in favor of the free use of land. But it is also true that the '"intent of the parties and the object of the deed or restriction should govern, giving the instrument a just and fair interpretation."'" [Citation.]" (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1377.) When the issue turns on the meaning of a phrase employed in CC&R's, "the phrase is to be interpreted in its ordinary and popular sense rather than according to some strict legal or technical meaning. '"This ordinary and popular sense is to be related to the circumstances under which the words are used, having in mind the purpose of the contract and the general situation which brought it into existence." [Citation.]' [Citation.]" (*King v. Kugler* (1961) 197 Cal.App.2d 651, 655.)

Section 10.14 of the CC&R's provides: "10.14 Further Subdivision. No [o]wner shall further partition or subdivide his [l]ot; provided, however, that this provision shall not be construed to limit the right of an [o]wner (1) to rent or lease all or any portion of his [l]ot by means of a written lease or rental agreement subject to the restrictions of this [d]eclaration, *so long as the [l]ot is not leased for transient or hotel purposes*; (2) to sell his [l]ot; or (3) to transfer or sell any [l]ot to more than one [p]erson . . . . The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this [d]eclaration and the [by]laws of the [a]ssociation, and any failure by the lessee of such [l]ot to comply with the terms of this [d]eclaration or the [b]ylaws of the [a]ssociation shall constitute a default under the lease." (Italics added.)

We reject defendants' contention this section is merely "a ban on subdividing of property" (bold omitted) and that we should strictly construe it as such. As plaintiff points out, the CC&R's expressly state, "The article and section headings

have been inserted for convenience only, and shall not be considered or referred to in resolving questions or interpretation or construction."

Defendants acknowledge the section permits "renting or leasing all or any p[or]tion of a [l]ot" subject to the caveat that it "'not [be] leased for transient or hotel purposes.'" The determinative question thus is whether defendants leased the property for such purposes.

The CC&R's do not define "transient or hotel purposes." According to defendants, "[t]he Oxnard American College Dictionary defines 'transient' as 'staying or working in a place for only a short time,' or 'a person who is staying in a place for a short time[,]'" and "'[h]otel' is defined as 'an establishment providing accommodations, means and services for travelers and tourists.'" The use of dictionary definitions constitutes an acceptable manner of ascertaining the ordinary and popular usage of words. (*Golden Security Thrift & Loan Assn. v. First American Title Ins. Co*. (1997) 53 Cal.App.4th 250, 256.) But these definitions are consistent with plaintiff's interpretation that section 10.14 bans the rental of residential lots to provide "accommodations, means, and services" on a weekend, weekly, and similar "short-time" periods. Defendant has not explained how they are not. Because we conclude defendants' alleged conduct would be prohibited under section 10.14 even under the definitions offered by defendants, it is unnecessary to address their claim that plaintiff's citation of extrinsic evidence in the form of a local ordinance shows section 10.14's language is ambiguous and requires strict construction.

Defendants maintain section 10.14 should be narrowly construed to ban only the renting out of individual rooms because the prohibition on "partitioning the property" "is akin to" forbidding "the [l]ot to be leased out to multiple renters." They assert "[t]his interpretation is . . . consistent with the restriction contained in [section] 10.1 that each [l]ot shall be used as a single family residence." We are not persuaded by this strained view of section 10.14, which speaks in terms of "the lot" and not individual rooms within the lot.

Defendants' position is further weakened by plaintiff's adoption of the addendum in August 2007, prohibiting the renting, leasing or letting of the property for a period of less than 30 days. Defendants summarily assert in a footnote the addendum is unenforceable because use restrictions must be recorded to be valid and "a homeowners association cannot enact rules or regulations that are more restrictive than those contained in the CC&R's," relying on *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 375, *MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 628, and *Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3d 726, 733-734. But these cases are inapposite because the addendum was not a new use restriction, a more restrictive rule or regulation, or an amendment to the CC&R's. Rather, the addendum merely clarified the use restriction contained in section 10.14. (See *Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 41 [unrecorded regulations held valid because association "operating under . . . land use covenant [has power] to clarify and define its terms"].) Defendants cite no authority disallowing such clarification.

b. Nuisance

Defendants contend there is no admissible evidence their short-term leasing of the property created a nuisance notwithstanding plaintiff's submission of three witness declarations stating, "Defendants' leasing of their property on a short-term basis to vacationers, strangers for parties or special events, and film crew and photographers for commercial purposes, creates a light, traffic and noise disturbance which is a nuisance for me and my family." Although they concede the court did not rule on their objections, they argue that if it had the evidence "would not support [plaintiff's] claim" and cite to conflicting statements in Arditi's declaration.

But defendants' failure to obtain rulings waives their objections on appeal and leaves the evidence in the record. (*Dodge, Warren & Peters Ins. Services, Inc. v.*

Riley (2003) 105 Cal.App.4th 1414, 1421; *Dimond v. Caterpillar Tractor Co*. (1976) 65 Cal.App.3d 173, 180.) Moreover, "'"we do not reweigh [conflicting evidence] or determine the credibility of witnesses on appeal. '[T]he trial court is the judge of the credibility of the affidavits filed in support of the application for preliminary injunction and it is that court's province to resolve conflicts.' [Citation.] Our task is to ensure that the trial court's factual determinations, whether express or implied, are supported by substantial evidence. [Citation.] Thus, we interpret the facts in the light most favorable to the prevailing party and indulge in all reasonable inferences in support of the trial court's order. [Citations.]" [Citation.]' [Citation.]" (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 427.) We conclude the declarations submitted by plaintiff constitute substantial evidence to support the court's implied determination that defendants' alleged conduct created a nuisance.

3. Harm

Defendants challenge plaintiff's showing of harm if the injunction was not granted. In response to plaintiff's argument that defendant's conduct "compromise[s] the CC&R's overall plan for an attractive, quiet, upscale residential community," defendants argue "[t]here [is] no evidence . . . regarding the 'overall plan' . . . ." They also assert plaintiff's "claims of 'emboldened homeowners' disregarding the CC&R's, increased management and enforcement costs, and the premature deterioration of the development are nothing . . . more than rank speculation" because they are not expressly attested to in the declarations submitted by plaintiff. We are not persuaded.

Among other things, the declarants attested to a "change [in] the overall look and feel of the [a]ssociation from a family oriented community to a place where commercial activities take place on a regular basis." They "observed broken glass, trash and liquor bottles strewn about on the streets and sidewalks near [defendants'] [p]roperty[,] . . . pos[ing] a dangerous condition for both pedestrian and vehicular traffic."

Moreover, they claimed defendants' conduct "creates a light, traffic and noise disturbance . . . [amounting to] a nuisance for [the declarants] and [their] famil[ies] . . . [by] significantly interfer[ing] with the use and enjoyment of [their] property." Indulging all reasonable inferences in support of the court's order, substantial evidence supports the court's implied finding of harm.

DISPOSITION

The order is affirmed. Respondent shall recover its costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

O'LEARY, J.

IKOLA, J.